

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

3:23-CV-05073-RSM

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JAN 27 2023	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

LINDA L. VIVEIROS

Plaintiff,

NO.

COMPLAINT FOR
DECLARATORY RELIEF
AND DAMAGES

JURY DEMAND

vs.

CITY OF VANCOUVER,
VANCOUVER POLICE DEPARTMENT,
CLARK COUNTY AND CLARK COUNTY
JAIL

Defendants.

INTRODUCTION

On January 28th, 2020, Plaintiff Linda L. Viveiros was in her home with her boyfriend whereas there was a verbal argument going on between the two. As Mrs. Viveiros was in kitchen cutting vegetables, she exhibited suicidal ideation by taking the small knife and proceeded to make cuts upon her left wrist. Ms. Viveiros showed her boyfriend what she was doing and at this precise moment, Ms. Viveiros's Son entered the home and uncertain of what was happening called 911 but hung up immediately. 911 operators called Ms. Viveiros's Son back and dispatched police to Ms. Viveiros' home. The police in turn arrested Ms. Viveiros

1/27/23 DPP received

1 for using a knife for her suicidal ideation.
2 ms. viveiros suffers from both mental and
3 physical disabilities. The Vancouver Police deliberately
4 ignored ms. viveiros disabilities on four different
5 occasions while on scene and detaining and
6 arresting ms. viveiros. The Vancouver Police
7 proceeded to arrest ms. viveiros without any
8 mental intervention, medical treatment and
9 denied ms. viveiros her disability aid, e.g.
10 her knee brace upon her arrest. This
11 discriminatory treatment from the Vancouver
12 Police caused severe traumatic setback for
13 ms. viveiros who had been under mental
14 health care since 2016. The deliberate and
15 discriminatory actions of the Vancouver Police
16 has resulted in mental and physical harm
17 which continued upon being arrested and
18 incarcerated at the Clark County Jail.
19 Clark County Jail continued discriminatory
20 treatment denying ms. viveiros her disability
21 aid, e.g. knee brace and subjected ms. viveiros
22 to excruciating pain for her duration of
23 incarceration in the Clark County Jail.

1 This discriminatory treatment from the Vancouver
 2 Police and Clark County Jail has resulted in
 3 traumatic mental distress and anguish, physical
 4 pain with short and long-term damage and
 5 injury. Ms. Viveiros is in constant ongoing
 6 mental health treatment for the discriminatory
 7 acts of the Vancouver Police and the Clark
 8 County Jail. City of Vancouver, Vancouver
 9 Police, Clark County and Clark County
 10 JAIL (collectively "Defendants") discriminated
 11 against Ms. Viveiros on the basis of
 12 disability in violation of Title II of the
 13 Americans with Disabilities Act ("ADA")
 14 42 U.S.C. § 12131 et seq, section 504 of the
 15 Rehabilitation Act ("section 504"), 29 U.S.C.
 16 § 794 and The Washington Law Against
 17 Discrimination ("WLAD") RCW § 49.60.010 et
 18 seq. The torturous conditions in which Ms.
 19 Viveiros was subjected to also violates the
 20 Fourteenth Amendment and Ms. Viveiros asserts
 21 a claim pursuant to 42 U.S.C. § 1983. Ms.
 22 Viveiros seeks declaratory relief damages
 23 Pro SE FEES and cost and any cost deemed just.

1. PARTIES

1. Plaintiff Linda L. Viveiros lives in Vancouver, Washington

2. Defendant City of Vancouver is a political subdivision of the State of Washington that oversees the actions of the Vancouver Police department

3. Defendant Vancouver Police Department is a constituted body of persons empowered by the state of Washington with the aim to enforce the law, to ensure the safety, health and possessions of citizens.

4. Defendant Clark County is a political subdivision of the State of Washington and runs the Clark County Jail.

5. Defendant Clark County Jail is an intake facility that houses pre-trial and locally sentenced individuals arrested in Clark County WA.

6. Defendants (collectively) upon information and belief are the recipients of federal financial assistance

7. Defendants (collectively) were responsible for Ms. Viveiros's well-being while in custody and

1 detained from January 28, 2020 through January
2 29, 2020.

3 11. JURISDICTION AND VENUE

4 8. This court has jurisdiction pursuant to
5 28 U.S.C. § 1331, which gives district courts original
6 jurisdiction over civil actions arising in the Constitution,
7 laws or treaties of the United States.

8 9. This court has jurisdiction pursuant to
9 28 U.S.C. § 1343(a)(4), which gives district courts
10 jurisdiction over actions to secure civil rights
11 under Acts of Congress.

12 10. This court has jurisdiction pursuant to
13 28 U.S.C. § 1367, which gives district courts
14 supplemental jurisdiction over state law claims.

15 11. Venue is appropriate in this judicial
16 district under 28 U.S.C. § 1391 because the
17 incidents that gave rise to Plaintiffs Complaint
18 occurred in this district and Defendants reside
19 within this district.

20 11.1. FACTUAL ALLEGATIONS

21 12. Linda L. Viveiros is a 55-year-old female
22 who lives in the City of Vancouver, Washington.

23 13. Linda L. Viveiros has disabling knee

1 Conditions defined as physical impairments,

2 14. Linda L. Viveiros's disabling Knee
3 conditions require the use of Knee braces for
4 to support strength and pain Alleviation, at all
5 times.

6 15. Linda L. Viveiros Suffers From Post
7 TRAMATIC Stress disorder (PTSD), SEVERE depression
8 And Anxiety which are defined as Mental impairments.

9 16. Linda L. Viveiros seeks constant
10 therapy with her Therapist on a regular and
11 emergent basis when needed.

12 17. On January 28, 2020, Linda L. VIVEIROS
13 WAS detained, put into custody.

14 18. Linda L. VIVEIROS repeatedly informed
15 the 4 police officers who tackled her that
16 she was disabled and has bad knees and
17 that they were hurting her.

18 19. Vancouver police officers continued
19 to handcuff Ms. Viveiros with visible cuts
20 on left wrist.

21 20. Ms Viveiros was put into custody
22 in the back of the patrol vehicle.

23 21. Ms. Viveiros requested that the

1 police officers call her therapist.

2 22. The Vancouver police ignored Ms. Viveiros's
3 repeated request to call her therapist.

4 23. While in custody in the back of the
5 patrol vehicle, the police officers were inside
6 of the home conducting their investigation.

7 24. During the investigation, Ms. Viveiros's
8 boyfriend informed the police that Ms. Viveiros
9 was more likely to hurt herself and that Ms.
10 Viveiros had taken the knife across her arm.

11 25. Police officers returned to patrol vehicle
12 where Ms. Viveiros was detained and in custody
13 to remove metal handcuffs off of wrists and
14 replaced handcuffs with rubber ones with
15 total disregard of the cuts on Ms. Viveiros left
16 wrist and boyfriend's statement that Mrs. Viveiros
17 took the knife across her arm.

18 26. Vancouver police proceeded to arrest
19 Ms. Viveiros without any mental help intervention,
20 or medical examination despite the fact that EMT's
21 were on scene.

22 27. When Ms. Viveiros learned she was
23 being arrested, she ask the police to get her knee

brace which they denied her of.

28. Ms. Viveiros was transported to the Clark County Jail.

29. Upon intake at the jail, the police officer documented that Ms. Viveiros spoke of suicidal ideation while she was being transported to the Clark County Jail.

30. The police still proceeded to arrest and book Ms. Viveiros into the Clark County Jail despite the fact that the police acknowledged Ms. Viveiros's mental state.

31. Upon being booked inside the Clark County Jail, Ms. Viveiros informed jail staff that she was disabled and needed two knee replacements.

32. Ms. Viveiros informed jail staff that the Vancouver police refused to let her bring her knee brace.

33. Ms. Viveiros repeatedly ask to make a call to her therapist or see a therapist there in the jail.

34. Ms. Viveiros request were ignored.

35. Knowing Ms. Viveiros knee conditions,

1 The Clark county Jail Staff placed Ms. Viveiros
2 on the second level of the housing unit.

3 36. Ms. Viveiros was placed at the
4 farthest holding cell from where she had to
5 walk up the stairs.

6 37. Ms. Viveiros holding cell had an open
7 top bunk only as the bottom bunk was
8 occupied.

9 38. Ms. Viveiros had to subject herself
10 to sitting, laying on the floor because her
11 knee conditions limited her ability to climb
12 onto top bunk.

13 39. Ms. Viveiros was given a medical
14 screening, e.g. Blood pressure check upon booking.
15 Ms. Viveiros Blood pressure was so high that
16 it required immediate medical intervention.

17 40. Clark county Jail Staff waited three
18 hours before giving Ms. Viveiros medication,
19 putting her life at risk.

20 41. Clark county Jail Staff by their own
21 documented records acknowledge that Ms. Viveiros
22 high blood pressure could have deadly, worsening conditions,
23 permanent disability or other consequences.

1 42. On January 29, 2020 while being taken
2 to the courtroom for first appearance with handcuffs
3 and shackles on, Ms. Viveiros was subject to
4 kneeling on her knees, facing the wall on a hard
5 wooden bench.

6 43. Ms. Viveiros in excruciating pain by
7 having to kneel on her knees which is detrimental
8 to her knee conditions was begging to be able to move
9 from that position.

10 44. Ms. Viveiros was forced to stay in
11 that position for over 10 minutes

12 45. Ms. Viveiros request to call her
13 therapist or see the jail therapist while she
14 was detained inside the jail went ignored.

15 46. Ms. Viveiros was only allowed to
16 see jail therapist when she was just about
17 to be released from jail on her own recognizance.

18 47. Despite Ms. Viveiros release from jail,
19 her mental depression and anxiety manifested far
20 greater than any experience she has had.

21 48. Defendants (collectively) inflicted deliberate
22 pain, suffering and mental anguish on Ms. Viveiros
23 and acted with malice and deliberate indifference

1 to Ms. Viveiros's obvious suffering and pleas
2 for help.

3 49. Ms. Viveiros suffered damages and
4 continues to suffer damages as the result of
5 defendant's (collectively) conduct.

6 FIRST CAUSE OF ACTION

7 Title II of the Americans with Disability Act of 1990

8 42 U.S.C. § 12131 et seq.

9 (Against Defendants City of Vancouver, Vancouver Police,
10 Clark County, CLARK COUNTY JAIL

11 50. Ms. Viveiros incorporates by reference the
12 allegations in the paragraphs above.

13 51. The ADA was enacted on July 26, 1990,
14 more than 30 years ago, in order to protect individuals
15 with disabilities against discrimination.

16 52. Title II of the ADA provides that "no
17 qualified individual with a disability shall, by reason
18 of such disability, be excluded from participation in
19 or be denied the benefits of the services, programs, or
20 activities of a public entity, or be subjected to
21 discrimination by any such entity" 42 U.S.C. § 12132

22 53. Due to her disabling knee conditions and her
23 mental health impairments, Ms. Viveiros is substantially
limited in the major life activity of walking and daily functions.

1 54. SHE IS therefore an individual with a
 2 disability within the meaning of the ADA. 42 U.S.C.
 3 §12131.

4 55. Ms. Viveiros is a qualified individual with a
 5 disability under the meaning of Title II of the ADA, 42
 6 U.S.C. § 12131(2) because she meets the essential
 7 eligibility requirements for the receipt of custody and
 8 incarceration SERVICES by Defendants.

9 56. Defendants are public entities under the
 10 meaning of Title II of the ADA as it is an "instrumentality
 11 of a State... or local government. 42 U.S.C. § 12131(1)(b).

12 57. Defendants illegally and intentionally
 13 discriminated against Ms. Viveiros, on the basis of her
 14 disabilities and in violation of Title II of the ADA, by
 15 denying her the basic SERVICES of custody and
 16 incarceration with accommodations for her disabilities.

17 58. A public entity must make "reasonable
 18 modifications in policies, practices, or procedures when the
 19 modifications are necessary to avoid discrimination on
 20 the basis of disability, unless the public entity can
 21 demonstrate that making the modifications would
 22 fundamentally alter the nature of the service, program,
 23 or activity." 28. C.F.R. § 35.130(b)(7)(1)

59. As public entities, Defendants are required under the ADA to make modifications for persons with walking disabilities as well as mental health care policies in order to accommodate Ms. Viveiros's disabilities.

60. By refusing to do so, Defendants discriminated against Ms. Viveiros on the basis of her disabilities by denying her use of her walking aid, e.g. brace and denial of Mental health evaluation crisis that the police and jail provides to similarly situated individuals without her disabilities, 28 C.F.R. § 35.130(b)

(1)(ii)

61. Defendants intentionally and deliberately discriminated against Ms. Viveiros on the basis of her disabilities, in violation of Title II of the ADA and its implementing regulations.

62. Ms. Viveiros experienced harm as the result of discrimination including but not limited to severe depression, anxiety, torture and fear.

63. Ms. Viveiros is therefore entitled to monetary damages and an award of pro-se fees, costs and disbursements pursuant to the ADA, 42 U.S.C. § 12133

SECOND CAUSE OF ACTION SECTION 504 OF the Rehabilitation Act of 1973

29 U.S.C. § 794
(AGAINST ALL DEFENDANTS)

64. Ms. Viveiros incorporates by reference the allegations in the paragraphs above.

65. The Rehabilitation Act of 1973 was enacted in part to further a policy of promoting "respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals [with disabilities]" 29 U.S.C. § 701(c)(2)

66. Ms. Viveiros is limited in the major activity of walking and daily functions due to her disabling knee conditions and mental impairments.

67. At all times relevant to this action, Defendants were recipients of federal financial assistance.

68. Section 504 of the Rehabilitation Act provides that "no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" 29 U.S.C. § 794(a)

69. Mental health and walking accommodations

1 is provided to other in custody and incarcerated
 2 individuals. Because of her mental impairment
 3 disability requiring mental health therapy. By
 4 denying Ms. Viveiros this necessary and reasonable
 5 accommodation while in custody and incarceration.

6 70. USE OF Walking aids is provided to others
 7 in custody and incarceration. Ms. Viveiros cannot
 8 Walk, climb stairs without the use of Knee
 9 Braces

10 71. By denying Ms. Viveiros these necessary
 11 and reasonable accommodations for her mental
 12 well being and walking accommodations, Defendants
 13 denied Ms. Viveiros the benefits of a program or
 14 activity receiving Federal Financial assistance and
 15 discriminated against her in Violation of § 504.

16 72. The criteria Defendants used to deny Ms.
 17 Viveiros access to mental health services and
 18 use of her knee brace had the effect of Subjecting
 19 her to discrimination solely based on her
 20 disability.

21 73. THE Rehabilitation Act extends relief to
 22 "any person aggrieved" by discrimination in
 23 violation thereof. 29 U.S.C. § 794a(a)(2)

74. Defendants were informed at multiple times of Ms. Viveiros' disabling knee conditions and mental health status.

75. Defendants' knowledge came not only from Ms. Viveiros' request but also communication with Ms. Viveiros' family members as well as the police officers themselves.

76. In spite of this knowledge, Defendants intentionally denied Ms. Viveiros' reasonable accommodation request, intentionally failing to act to protect her rights.

77. Defendants intentionally discriminated against Ms. Viveiros, on the basis of disabilities, in violation of the Rehabilitation Act and its implementing regulations.

78. Ms. Viveiros suffered harm, severe depression and anxiety as the result of Defendants' actions and inactions.

79. Ms. Viveiros is therefore entitled to damages and pro se fees and cost for the injuries and loss sustained as a result of the Defendants' discriminatory conduct and deliberate indifference as hereinbefore alleged.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983

(AGAINST ALL DEFENDANTS)

80. Ms. Viveiros incorporates by reference the allegations in the paragraphs above. The Fourteenth Amendment to the United States Constitution guarantees equal protection under the law.

81. Incarcerated and individuals in custody have a constitutional right to receive and have access to adequate essentials including medically appropriate mental health intervention and use of disability aids for mobility.

82. Congress enacted 42 U.S.C. § 1983 to provide a remedy for constitutional violations.

83. The failure of Defendants to provide adequate mental health intervention and use of disability aids for mobility caused the deprivation of Ms. Viveiros's rights and was the ultimate cause of Ms. Viveiros's injuries.

84. Defendants' acts and omissions resulted in the wanton and unnecessary infliction of pain on Ms. Viveiros.

85. Defendants were acting under the color

1 of State law when they violated Ms. Viveiros
2 constitutional rights.

3 86. Defendants acted with deliberate
4 indifference because they knew or should have known
5 that Ms. Viveiros was in need of immediate mental
6 intervention and required the use of a walking
7 mobility aid and the failure to provide her with
8 such would result in significant emotional and
9 physical injuries to Ms. Viveiros, yet they failed to
10 provide her with any use of a aid or provide her
11 with any mental health treatment or intervention.

12 87. Defendants have a custom or practice
13 of not providing accommodations for disabilities.

14 88. Defendants custom or practice of not
15 timely providing immediate mental health intervention
16 and complete denial of disability aids caused
17 Ms. Viveiros's injuries.

18 89. Defendants acted with reckless or callous
19 indifference to Ms. Viveiros's federally protected right
20 to receive immediate mental health care while in
21 custody and incarceration. Defendants' failure to
22 provide immediate mental health services despite
23 numerous request and physical injury to Ms. Viveiros's wrist.

1 was malicious, wanton and oppressive, causing
 2 severe emotional and physical harm to Ms. Viveiros
 3 from the moment she was detained and in custody
 4 to when she was released from jail.

5 90. Ms. Viveiros suffered compensatory damages
 6 as a result of Defendants' conduct

7 FOURTH CAUSE OF ACTION

8 THE Washington Law Against Discrimination

9 R.C.W. §§ 49.60.010 et seq.

10 (Against Clark County, Clark County Jail)

11 91. Ms. Viveiros incorporates by reference the
 12 allegations in the paragraphs above.

13 92. The Washington Law Against Discrimination
 14 ("WLAD") declares "The right to be free from
 15 discrimination because of... the presence of any
 16 sensory, mental, or physical disability... is recognized as
 17 and declared to be a civil right. This right shall include,
 18 but not to be limited to... (b) The right to the full
 19 enjoyment of any of the accommodations, advantages,
 20 facilities, or privileges of any place of public resort,
 21 accommodation, assemblage or amusement... R.C.W. §
 22 49.60.030(1)

23 93. Ms. Viveiros is an individual with disabilities

1 within the meaning of the WLAD, R.C.W. § 49.60.040(7)(a)

2 94. Clark County Jail is a place "where medical
3 service or care is made available" and is thus a place
4 of public accommodation within the meaning of the
5 WLAD, R.C.W. § 49.60.040(2). Clark County is
6 subject because it operates the Clark County Jail
7 which is in turn subject to the WLAD

8 95. Defendants discriminated against Ms. Viveiros
9 by not affording her full and equal access to
10 mental health services because of her disabilities

11 96. Defendants provide effective accommodations
12 and medical care to other individuals who are
13 incarcerated without disabilities and therefore
14 discriminated against Ms. Viveiros by failing to
15 provide these effective services or treatment to Ms.
16 Viveiros because of her disabilities.

17 97. Defendants intentionally discriminated against
18 Ms. Viveiros by refusing to provide proper mental
19 health care and accommodations for a walking aid
20 to Ms. Viveiros during her incarceration, despite
21 Ms. Viveiros clear and repeated request for mental
22 health intervention and the need for a walking aid.

23 98. As a direct and proximate cause of Defendants

1 discriminatory conduct as alleged in the Complaint,
 2 Mrs. Viveiros suffered severe mental harm, emotional
 3 distress, physical harm and loss of dignity.

4 99. As a direct and proximate cause of
 5 defendants discriminatory conduct as alleged in this
 6 complaint, Mrs. Viveiros suffered real out-of-pocket,
 7 monetary damages and mental and emotional distress.

8 FIFTH CAUSE OF ACTION

9 Negligence 10 (Against ALL Defendants)

11 100. Ms. Viveiros incorporates by reference the
 12 allegations in the paragraphs above.

13 101. On or about January 28, 2020, Ms.
 14 Viveiros was detained, put into Custody and
 15 incarcerated At Clark county Jail.

16 102. Between January 28, 2020 and
 17 January 29, 2020, Defendants negligently Failed
 18 to provide Ms. Viveiros with immediate medical
 19 intervention putting her life at Risk. Defendants
 20 Failed to give Ms. Viveiros immediate Mental health
 21 Intervention despite physical evidence of self harm.
 22 The Defendants criminalized Ms. Viveiros for a
 23 Mental Health crisis. The Defendants denied Ms.

1 VIVEIROS The use of her walking aid and
 2 willfully and Recklessly subjected Ms. Viveiros
 3 to torturous conditions.

4 103. As a direct and legal result of the
 5 negligence of the Defendants, Ms. Viveiros was
 6 injured in her health, strength, well being and
 7 activity, all of which injuries have caused and
 8 continue to cause extreme psychological damage,
 9 physical and emotional pain and suffering. As a
 10 result of these injuries, Ms. Viveiros has suffered
 11 general damages.

12 PRAYER FOR RELIEF

13 WHEREFORE, MS. VIVEIROS respectfully request this court:

14 1. Assume jurisdiction over this action;
 15 2. Award Ms. Viveiros compensatory damages,
 16 including economic and noneconomic damages, damages for
 17 pain and suffering, sheer terror and in an amount
 18 to be proven at trial;

19 3. Award Ms. Viveiros reasonable PRO SE Fees and
 20 Costs pursuant to the Americans with Disabilities Act, the
 21 Rehabilitation Act of 1973, section 1983 and the
 22 Washington Law Against Discrimination and to the extent
 23 available under the law;

4. Declare the Defendants jointly and
severally liable;

5. Award any and all applicable interest
on the judgement; and

6. Award such other and further relief as
the Court deems just and equitable

JURY DEMAND

Trial by Jury demanded.

DATED THIS 27th day of January, 2023

BY:

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